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Nos. ~~700~~ 6 and ~~701~~ 7

In the Supreme Court of the United States

OCTOBER TERM, 1934

COMPAGNIE GENERALE TRANSATLANTIQUE, PETITIONER

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF NEW YORK

HAMBURG-AMERICAN LINE, PETITIONER

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF NEW YORK

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 783

COMPAGNIE GENERALE TRANSATLANTIQUE, petitioner

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF New York

No. 784

HAMBURG-AMERICAN LINE, PETITIONER

v.

PHILIP ELTING, COLLECTOR OF CUSTOMS, PORT OF New York

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

In the case of the Compagnie Generale Transatlantique, No. 783, the only opinion rendered by the District Court was an oral opinion (R. 21–26).

The opinion of the Circuit Court of Appeals for the Second Circuit (R. 50–52) is reported in 74 F. (2d) 209.

In the *Hamburg-American Line case,* No. 784, the court rendered a short oral opinion referring to its opinion in the *Compagnie Generale Transatlantique case* (R. 12). The opinion of the Circuit Court of Appeals for the Second Circuit (R. 35–37) is reported in 74 F. (2d) 209.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered December 17, 1934 (R. 52, Compagnie Generale Transatlantique; R. 37, Hamburg-American Line). The petition for writs of certiorari was filed March 15, 1935. The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the circumstances presented in these cases, a fine was lawfully imposed upon each of the petitioners by the Secretary of Labor under Section 20 of the Immigration Act of 1924 where the order for detention of alien seamen was served on an officer of the vessel other than the master thereof and notice of liability to fine was served on the owner of the vessel.

STATUTE INVOLVED

The applicable portions of the statute involved are set forth in the Appendix, *infra,* p. 11–12.

STATEMENT

The facts as disclosed by the record in the Compagnie Generale Transatlantique case, No. 783, may be summarized as follows (R. 3–42);

The petitioner Compagnie Generale Transatlantique, a foreign corporation, was the owner of the S. S. *Ile de France* (R. 4), which vessel arrived at the port of New York on or about February 6, 1930 (R. 4), having on board alien seamen. On February 6, 1930, a United States immigration officer boarded the vessel, inspected the crew, and it not having been established to his satisfaction that 102 alien members of the crew had no intention of abandoning their calling as seamen, and it appearing that they were not on the visa crew list (R. 28–29), served upon the fourth officer of the vessel, and also upon the person designated as the commander, an order to detain such seamen on board (R. 28). Two of these alien seamen escaped from the vessel, illegally entered the United States, and were not on board the vessel when it sailed on February 7, 1930 (R. 31).

The French Line, the petitioner here, on February 19, 1930, was served with notice of liability to fine in the amount of $2,000 under the provisions of Sections 19 and 20 of the Immigration Act of 1924 (R. 20, 32–33). The petitioner thereupon appeared by its attorney (R. 34), and objected to the imposition of the fine (R. 37–39). On May 17, 1930, this case came before the Board of Review in fine proceedings (R. 39). It was recommended

that a fine of $2,000 be imposed, and it was so ordered by the Secretary of Labor (R. 40–41). The petitioner, in order to obtain clearance of the vessel, paid to the respondent under protest the sum of $2,000 (R. 6, 9). Thereafter the petitioner brought suit in the District Court of the United States for the Southern District of New York to recover the fine imposed (R. 2–11). The case was submitted to the court upon the pleadings and one exhibit. Both sides moved for a directed verdict. The court directed a verdict for the respondent (R. 25–26), and judgment was entered dismissing the complaint on the merits (R. 16–17). On appeal the Circuit Court of Appeals for the Second Circuit affirmed the judgment of the District Court (R. 52).

The facts as disclosed by the record in the Hamburg-American Line case, No. 784, are substantially as follows (R. 3–27):

The petitioner Hamburg-American Line, a foreign corporation, was the owner of the S. S. *Milwaukee* (R. 3), which vessel arrived at the Port of New York on or about April 15, 1930 (R. 4), having on board alien seamen. On April 15, 1930, a United States immigration officer boarded the vessel, inspected the crew, and it not having been established to his satisfaction that one alien member of the crew had no intention of abandoning his calling as a seaman, served on the first officer an order to detain this seaman on board (R. 4, 17–18).

This alien seaman escaped from the vessel, illegally entered the United States, and was not on board the vessel when it sailed on April 19, 1930 (R. 15). On April 25, 1930, the Hamburg-American Line, petitioner here, was served with notice of liability to fine in the amount of $1,000 under the provisions of Sections 19 and 20 of the Immigration Act of 1924 (R. 19–20). The petitioner thereupon appeared by its attorney (R. 21) and objected to the imposition of the fine (R. 22–23). On October 10, 1930, this case came before the Board of Review in fine proceedings (R. 23). On February 13, 1931, it was recommended that a fine of $1,000 be imposed, and it was so ordered by the Secretary of Labor (R. 26–27). The petitioner, in order to obtain clearance of the vessel, paid to the respondent under protest the sum of $1,000 (R. 5). Thereafter the petitioner brought suit in the District Court for the Southern District of New York to recover the fine imposed (R. 3–6). The case was submitted to the court upon the pleadings and one exhibit. Both sides moved for a directed verdict. The court directed a verdict for the respondent (R. 12), and judgment was entered dismissing the complaint on the merits (R. 10). On appeal, the Circuit Court of Appeals for the Second Circuit affirmed the judgment of the District Court (R. 37).

ARGUMENT

The cases of the two petitioners involve the same question of law and substantially similar facts.

They were considered together by the court below in one opinion which affirmed the judgments of the District Court.

It is admitted by the petitioners that they brought to the port of New York three alien seamen who were ordered detained on board by the inspecting immigration officers, that these three seamen escaped and did not sail with their vessels, and so far as the record discloses are still illegally in the United States.

The petitioners, however, contend that the fines were unlawfully imposed, because the notices to detain on board were not served upon the owners, charterers, consignees, or masters of the vessels, the persons designated in the statute as those upon whom the obligation to detain on board rested. While the record discloses that the orders to detain on board were served upon officers of the vessels other than the masters thereof, we submit that, in the circumstances existing in these cases, there was compliance with the statute sufficient to justify the imposition of the fines.

In the case of the Compagnie Generale Transatlantique, the immigration inspector served the order of detention upon the fourth officer of the vessel, and also upon a person designated as "commander" who may well have been the master of the vessel. In the Hamburg-American Line case, the immigration inspector served the order of detention upon the first officer of the vessel and it

would appear that the master of the vessel had actual notice of the order to detain before the seamen escaped (R. 4, 16–17).

While the record is silent as to whether or not the officers actually served were in charge of the vessel at the time service was made, it may well be presumed, as was indicated by the District Court (No. 783, R. 22–23), that the persons served were the acting masters of the vessels, as otherwise the petitioners would have presented evidence to the contrary. The law is well settled that there is a presumption of regularity which attaches to the acts of public officials. *United States* v. *Chemical Foundation,* 272 U. S. 1, 14; *Smith* v. *St. L. & So. W. Ry. Co.,* 181 U. S. 248, 258; *Quinlan* v. *Green County,* 205 U. S. 410, 422. The obligation rested on the petitioners to present convincing evidence that the immigration inspector had not served the officers in charge of the vessels. *Smith* v. *St. L. & So. W. Ry. Co., supra.* In the light of the fact that no evidence whatsoever was introduced to show that the masters of the vessels were on board and in charge of the vessels, we submit that the court below was correct in concluding as a matter of fact that the officers served were actually in charge of the vessels.

While the statute provides that the notice to detain shall be served upon the master of the vessel, it must be interpreted in a manner which will not do violence to the purpose of the Act. If the contention of the petitioners be correct, it would be

impossible, should the master go ashore, secrete himself, or otherwise make himself immune to service, properly to enforce the immigration laws. The requirement that service be made upon the master is primarily for the purpose of procuring the detention of the aliens. Unless the officer who is the acting master during the master's absence may lawfully be served, alien seamen might be allowed to land illegally, and no one would be chargeable with the duty of detaining them on board.

The petitioners also contend that they are not liable to fine unless the notices to detain on board and the notices of liability to fine were served personally on them. The notice of hearing in the first case was served on the French Line, owner of the S. S. *Ile de France* (R. 4, 32), and notice in the second case was served on the Hamburg-American Line, owner of the S. S. *Milwaukee* (R. 3, 19). While the notices described the petitioners as agents, such description is immaterial and does not alter their character as owners. These notices set forth that if a hearing was desired as to whether a fine should be imposed "you will be allowed sixty days from the date of this notice for that purpose, * * *." As the result of such notices, attorneys for the owners, the petitioners here, requested hearings and appeared before the Board of Review and opposed the imposition of the fines. It is apparent, therefore, that the owners of the vessels had notice of the hearings, and an opportunity to be heard. Due process of law requires no more.

The appearance and submission of the petitioners to the jurisdiction of the Secretary of Labor corrected any defect in respect of service which might have existed.

No question here exists as to the sufficiency of the service of notices of liability to fine inasmuch as the notices were actually served upon the owners. Notice to the master to detain on board has been held in effect the equivalent of notice to the owner, thereby imposing a duty to detain on the owner. *British Empire Steam Navigation Co., Ltd.* v. *Elting,* 74 F. (2d) 204 (C. C. A. 2d)[1]; *Societe Ligure Di Aramento* v. *Elting,* 74 F. (2d) 207 (C. C. A. 2d).

The decision below does not conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of *Sinclair Navigation Company* v. *United States,* 32 F. (2d) 90. In that case no notice had been served on the master to detain the alien on board the vessel, and the court held that the imposition of a fine for violation of the immigration laws by reason of the failure to detain an alien seaman on board a vessel was illegal where, in fact, no order to detain had been made.

The case at bar may likewise be distinguished from *Lancashire Shipping Company, Ltd.* v. *Elting,* 70 F. (2d) 699 (C. C. A. 2d). In the *Lancashire* case the notice of detention was served on the

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[1] This case is now pending before this Court on a petition for a writ of certiorari to which the Government has filed a brief in opposition (No. 761).

master of the vessel, and notice of liability to fine was served on the agent of the owner. The owner, however, never participated in the hearing, nor was it a party to the proceedings; whereas, in the instant case, the owners were served with notices of liability to fine, participated in the hearings, opposed the imposition of the fines, and were parties to the proceedings.

The other decisions of the Circuit Court of Appeals for the Second Circuit cited by the petitioners are so obviously inapplicable that they do not require discussion.

CONCLUSION

We respectfully submit that the decision of the court below is correct, and that the petition for writs of certiorari should be denied.

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APRIL 1935.

APPENDIX

The Immigration Act of 1924, c. 190, 43 Stat. 153, 164 (U. S. C., Title 8, Secs. 166, 167), provides in part as follows:

> SEC. 19. No alien seaman excluded from admission into the United States under the immigration laws and employed on board any vessel arriving in the United States from any place outside thereof, shall be permitted to land in the United States, except temporarily for medical treatment, or pursuant to such regulations as the Secretary of Labor may prescribe for the ultimate departure, removal, or deportation of such alien from the United States.
>
> SEC. 20. (a) The owner, charterer, agent, consignee, or master of any vessel arriving in the United States from any place outside thereof who fails to detain on board any alien seaman employed on such vessel until the immigration officer in charge at the port of arrival has inspected such seaman (which inspection in all cases shall include a personal physical examination by the medical examiners), or who fails to detain such seaman on board after such inspection or to deport such seaman if required by such immigration officer or the Secretary of Labor to do so, shall pay to the collector of customs of the customs district in which the port of arrival is located the sum of $1,000 for each alien seaman in respect of whom such failure occurs. No vessel shall be granted clear-

ance pending the determination of the liability to the payment of such fine, or while the fine remains unpaid, except that clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine, or of a bond with sufficient surety to secure the payment thereof approved by the collector of customs.

(b) Proof that an alien seaman did not appear upon the outgoing manifest of the vessel on which he arrived in the United States from any place outside thereof, or that he was reported by the master of such vessel as a deserter, shall be prima facie evidence of a failure to detain or deport after requirement by the immigration officer or the Secretary of Labor.

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